

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

WILLIAM GOULECHI, JOANNE GOULECHI,  
MICHAEL VUKICH, ISABEL VUKICH,  
ROBERT PACHLA, LAURIE PACHLA,  
DAVID STAPELS, MICHAEL MEGACNK,  
PETER FUCIARELLI, MARY FUCIARELLI,  
MICHAEL MAZZARA, ELIZABETH MAZZARA,  
NICK SOURIS, MARY SOURIS,  
MICHAEL KOUSTICK and TINA KOUSTICK,

Plaintiffs,

vs.

Case No. 2012-5578-CZ

PHILLIP SERRA AND CANDY SERRA,

Defendants.

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OPINION AND ORDER

On April 9, 2014, the Court held a trial in connection with this matter. The parties have since filed their proposed findings of fact. The Court has reviewed all of the materials submitted by the parties, as well as the testimony taken at trial, and is now prepared to make its decision.

*Factual and Procedural History*

The parties are residents of the Buckingham Forest Subdivision (the “Subdivision”). All owners of lots within the Subdivision are bound by restrictive covenants and restrictions which run with the land (the “Restrictions”). On February 28, 2000, Donald and Carolyn Todd purchased Lot 7 of the Subdivision (the “Subdivision Lot”). Subsequently, Mr. and Mrs. Todd purchased the lot directly behind and west of Lot 7 (the “Adjoining Lot”). In 2002, the Todds placed the Subdivision Lot and Adjoining Lot under the same parcel identification number. In 2002, the Todds allegedly erected a shed on the Adjoining Lot. On February 9, 2011,

Defendants purchased and received a warranty deed to the Subdivision Lot and the Adjoining Lot.

Plaintiffs allege that Defendants have breached several of the Restrictions by, *inter alia*, maintaining two trailers, a detached garage and a shed, and operating a tractor on the properties. On December 19, 2012, Plaintiffs filed their complaint in this matter asserting claims for violation of covenants and restrictions (Count I), nuisance (Count II), gross negligence (Count III) and injunctive relief (Count IV). The Court has since granted Defendants' summary disposition as to Count II, nuisance, and the portions of Counts I and III related to the Adjoining Lot. In addition, at the trial the Court dismissed the portions of Plaintiffs' claims related to noise.

#### *Arguments and Analysis*

In support of their claims, Plaintiffs first contend that Defendants' placement of their northern driveway violates the minimum setback and yard requirements under the Restrictions. The Restrictions provide, in pertinent part:

8. Minimum Set Back and Yard Requirements.

No building shall be located on any lot nearer than (30) feet to the front site line or closer than thirty-five (35) feet to the rear site line. All building shall be erected so as to provide two (2) side yards in accordance with the following minimum setback requirements:

(A) the total minimum width of both side yards shall equal not less than twenty (20) feet; (B) the minimum wide of each side yard shall equal not less than eight (8) feet; (C) the minimum distance between principal buildings located on adjoining sides shall not be less than twenty (20) feet. When rear yard abut side yards, the minimum width of each side yard abutting upon a street shall not be less than (30) feet. (*See Exhibit 2 to Defendant's Post Trial Brief.*)

In this case, Plaintiffs contend that Defendants' northern driveway violates Section 8. However, Plaintiffs concede that a driveway is not a building; rather, Plaintiffs contend that the 8 foot side yards may not include any portion of a driveway. The Court is convinced that Plaintiffs' position is without merit. The Restrictions do not define "side yard." As with any

other contract, an undefined term will not make a covenant ambiguous; the term will be given its common meaning. *Terrien v Zwit*, 467 Mich 56, 76, 648 NW2d 602 (2002). Where words are undefined in the document at issue, a dictionary may be consulted to determine their plain and ordinary meaning. *People v Harris*, 495 Mich 120, 138; 845 NW2d 477 (2014).

A “side yard” has been defined as “an area adjoining one side of a house or other building.” Webster’s Premium Dictionary, Unabridged Edition (2014). Accordingly, the definition does not restrict a side yard to an unpaved area or otherwise exclude a driveway or other paved area. Consequently, the Court is satisfied the presence of a driveway on the side of Defendants’ property does not violate the side yard requirements in Section 8.

The final outstanding issue before the Court is whether Defendants have violated Section 12 of the Restrictions by traversing the Subdivision Lot with their commercial and/or recreational vehicles. Section 12 provides:

12. Permitted Vehicles. No trailers or recreational motor vehicles of any nature, including snowmobiles and motorcycles, shall be kept on or stored on any part of the property except within an enclosed garage. No trucks, excepting construction vehicles, shall be parked overnight on any lot stored or kept on any part of the property except within an enclosed garage. A pleasure boat on its trailer may not be parked on any lot except in any enclosed garage. For purposes of this Declaration, the term ‘recreational motor vehicle’ shall mean any vehicle primarily designed and used as temporary living quarters for recreational, camping, or travel purposes, including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle.

In this case, it appears undisputed that while some commercial and recreational vehicles have been used on the Subdivision Lot, those vehicles are stored on the Adjoining Lot and have not been parked or stored overnight on the Subdivision Lot. Accordingly, the Court is convinced that Defendants have not violated Section 12 by using traversing the Subdivision Lot with such vehicles.

### *Conclusion*

For the reasons set forth above, the Court finds that Defendants did not violate the Covenants and Restrictions by installing their northern driveway or driving their commercial and recreational vehicles across the Subdivision Lot. Accordingly, Plaintiffs' remaining claims are dismissed. Defendants' request for attorney fees and costs is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes this case.

IT IS SO ORDERED.

John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: June 9, 2014

JCF/sr

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